



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order seeking the return of his security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form on which the tenant asserts that on September 15, 2020, the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail to an address which is different than the mailing address for the landlord as indicated on the tenant’s Application for Dispute Resolution by Direct Request (the “application”). The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Canada Post Customer Receipt also contains the same recipient mailing address as indicated on the Proof of Service of the Tenant’s Notice of Direct Request Proceeding form.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of his security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on tenant in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the Act and “Policy Guideline #49 Tenant’s Direct Request – Deposits”. There can be no omissions or deficiencies with items being left open to interpretation or inference.

In the Direct Request process, the onus is on the tenant to prove they served the landlord with the Notice of Direct Request proceeding documents with all the required documents, as cited in Policy Guideline #49, in accordance with section 89 of the *Act*. Under the provisions of “Policy Guideline #49 Tenant’s Direct Request – Deposits”, the onus is on the tenant to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*.

On the Proof of Service of the Tenant’s Notice of Direct Request Proceeding, the tenant has asserted that the Direct Request Proceeding documents were served by way of

registered mail to an address that is not the same as the mailing address provided for the landlord on the tenant's Application for Dispute Resolution by Direct Request.

If the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the landlord, within the narrow scope of the Direct Request process, the tenant bears the burden to provide proof to support any such agreement. I find that there is no evidence before me to demonstrate that the parties agreed that the tenant may serve the documents to the landlord via an alternate mailing address that differs from the mailing address indicated for the landlord on the tenant's application.

I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided by the tenant as an approved alternate service address for the landlord, and there is no evidence before me to demonstrate that the parties agreed that the tenant may serve the documents to the landlord via an alternate address that differs from the mailing indicated for the landlord on the tenant's application.

I further find that there is no evidence before me that establishes that the tenant was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the Direct Request Proceeding documents via registered mail to an address that differs from the mailing address provided for the landlord on the application, and one that is not established as an alternate service address for the landlord, the tenant has not served the Notice of Direct Request Proceeding in accordance with the *Act*.

I find that the tenant has not sufficiently established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #49, and further find that I am not able to confirm service of the Notice of Direct Request to the landlord, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be

remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the tenant's application for a Monetary Order seeking the return of his security deposit, with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application for a Monetary Order seeking the return of his security deposit, with leave to reapply.

I dismiss the tenant's request to recover the \$100.00 filing fee paid for this application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 23, 2020

Residential Tenancy Branch